

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application of:	Young et al.	Confirmation No.:	3135
Serial No.:	10/657,363	Art Unit:	1648
Filed:	September 8, 2003	Examiner:	Hill, Myron G.
For:	ULTRA HIGH AFFINITY NEUTRALIZING ANTIBODIES	Attorney Docket No.:	10271-159-999 (CAM: 209073-999157)

**PETITION TO ACCEPT AN UNINTENTIONALLY  
DELAYED CLAIM FOR PRIORITY UNDER 37 C.F.R. §1.78**

**MAIL STOP: PETITION**  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with 37 C.F.R § 1.78, Applicants respectfully request acceptance of an unintentionally delayed claim for the benefit of a prior filed application under 35 U.S.C. §§119(e) and 120.

The above-identified application is a continuation application of U.S. Serial No. 09/771,415, filed January 26, 2001 (now U.S. Patent No. 6,656,467), which claims the benefit of U.S. Serial No. U.S. Provisional Application No. 60/178,426, filed January 27, 2000.

Upon review of the file history by the undersigned Attorney for Applicants on March 30, 2009 in connection with the Determination of Patent Term Adjustment under 35 U.S.C. § 154(b) that was mailed with the Notice of Allowability on December 31, 2008, it was noticed that:

- (a) the proper continuity data was included on the Transmittal Letter filed on September 8, 2003, which indicated that each application was incorporated by reference in its entirety (see Appendix A), but was not thereafter submitted by

way of Amendment or Application Data Sheet as required by 37 C.F.R. § 1.78(b)(3);

- (b) no Official Filing Receipt was ever mailed by the U.S. Patent and Trademark Office ("Patent Office"); and
- (c) the above-referenced patent application published as U.S. Publication No. 2004-0131609A1 and listed the correct continuity data on the face of the published document (*i.e.*, a continuation application of U.S. Serial No. 09/771,415, filed January 26, 2001, which claims the benefit of U.S. Serial No. U.S. Provisional Application No. 60/178,426, filed January 27, 2000) (see Appendix B).

As such, due to the conflicting information in the file, Applicants are filing this Petition as well as the accompanying Amendment, which amends the specification to recite that the present application is a continuation application of U.S. Serial No. 09/771,415, filed January 26, 2001 (now U.S. Patent No. 6,656,467), which claims the benefit of U.S. Serial No. U.S. Provisional Application No. 60/178,426, filed January 27, 2000.

Applicants hereby state that the entire delay between the date the claim of benefit was due and the date the claim of benefit was filed was unintentional. Applicants hereby petition to accept the unintentionally delayed claim for priority under 37 C.F.R. § 1.78. If this petition is accepted, Applicants respectfully request that the specification of the above-identified application be amended to reflect the proper benefit claim, as provided in the accompanying Amendment.

#### Filing Receipt

Since a Filing Receipt has not yet been received in connection with the above-identified patent application, Applicants request that the Patent Office issue a Filing Receipt listing that the above-identified application is a continuation application of U.S. Serial No. 09/771,415, filed


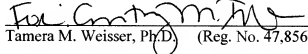
January 26, 2001 (now U.S. Patent No. 6,656,467), which claims the benefit of U.S. Serial No. U.S. Provisional Application No. 60/178,426, filed January 27, 2000.

Entry and grant of this Petition is respectfully requested.

Pursuant to 37 C.F.R. § 1.17(t), the estimated fee of **\$1410** for this Petition is being paid herewith via EFS-web (charged to Jones Day Deposit Account 50-3013). The Commissioner is authorized to charge the required Petition fee and any other required fees or credit any overpayment to Jones Day Deposit Account 50-3013.

Respectfully submitted,

Date: March 31, 2009

  
  
Tamera M. Weiss, Ph.D. (Reg. No. 47,856)

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*Attachments (Appendix A and B)*

U.S. Serial No. 10/657,363  
Petition Under 37 C.F.R. §1.78  
March 31, 2009  
Appendix A

## **APPENDIX A**

**Transmittal Letter for U.S. Serial No. 10/657,363 filed September 8, 2003**

18351 U.S. PTO  
09/08/03

17050 U.S. PTO  
10/657363  
09/08/03

Applicant(s):	Young et al		
Serial No:	Unassigned	Art Unit:	1648
Filed:	Herewith	Examiner:	Foley, S.
Title:	ULTRA HIGH AFFINITY NEUTRALIZING ANTIBODIES		
Docket No:	469201-689		

Commissioner for Patents  
U.S. Patent and Trademark Office  
Washington, D.C. 20231

TRANSMITTAL OF CONTINUATION APPLICATION UNDER 37 C.F.R. 1.53(b)

Transmitted herewith for filing is a Continuation Application of U.S. Application 09/771,415, filed 26 January 2001, still pending, of inventors:

James F. Young, Leslie S. Johnson, William D. Huse, Herren Wu and Jeffry D. Watkins

entitled: Ultra High Affinity Neutralizing Antibodies

Enclosed with the application are:

1. Application (51 sheets), Paper Sequence Listing (12 sheets);
2. Formal Drawings (10 sheets);

# COPY

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Filed: 8 September 2003

3. Copy of Declaration of Parent Application (executed – 3 sheets);
4. Information Disclosure Statement;
5. Form 1449 and Notices of References Cited (8 sheets);
6. Copy of Sequence Listing in Computer Readable Form (3.5" diskette);
7. Statement Under 37 C.F.R. 1.821(f);
8. Check \$1254.00; and
9. Self-addressed, Postage paid, return receipt postcard.

The fee has been calculated as follows **ON THE BASIS THAT APPLICANT IS A LARGE ENTITY** and in view of the claims added herewith by Preliminary Amendment:

	<u>Number of Claims Filed</u>	<u>Extra Claims</u>		<u>Rate</u>	<u>Fee</u>
Basic Fee				\$750	\$750
Total Claims	48 - 20 =	28	X	\$ 18	\$504
Indep. Claims	2 - 3 =	0	X	\$ 84	\$
<b>TOTAL:</b>					<b>\$1254</b>

## REMARKS

This application is a continuation of U.S. Application Serial No. 09/771,415, filed 26 January 2001, which is based on U.S. Provisional Application No. 60/178,426, filed 27 January 2000, the disclosures of which are hereby incorporated by reference in their entirety.


In addition, Applicants file herewith a copy of the Declaration and Power of Attorney filed in the parent application.

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Serial No.  
Filed: 8 September 2003

Applicants also file herewith an Information Disclosure Statement along with copies of forms 1449 and Notices of References Cited in the parent application. Applicant will supply copies of these references to the Examiner upon request but they should all be included in the parent file history.

The Commissioner is authorized to charge payment of any additional filing fees required with this communication or credit any overpayment to Deposit Account No. 03-0678.

<p><b><u>EXPRESS MAIL CERTIFICATE</u></b></p> <p>Express Mail Label No. EU129666084US</p> <p>Deposit Date: 8 September 2003</p> <p>I hereby certify that this paper and the attachments hereto are being deposited today with the U.S. Postal Service "Express Mail Post Office To Addressee" service under 37 CFR 1.10 on the date indicated above addressed to:</p> <p><b>Commissioner for Patents U.S. Patent and Trademark Office Washington, D.C. 20231</b></p> <p> Alan J. Grant, Esq.</p> <p><u>9/8/03</u> Date</p>
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Respectfully submitted,

  
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U.S. Serial No. 10/657,363  
Petition Under 37 C.F.R. §1.78  
March 31, 2009  
Appendix B

## **APPENDIX B**

**Cover Page of U.S. Publication No. 2004-0131609 A1**



(19) **United States**(12) **Patent Application Publication**(10) **Pub. No.: US 2004/0131609 A1****Young et al.**(43) **Pub. Date:****Jul. 8, 2004**(54) **ULTRA HIGH AFFINITY NEUTRALIZING ANTIBODIES**

(60) Provisional application No. 60/178,426, filed on Jan. 27, 2000.

(76) Inventors: James F. Young, Darnestown, MD (US); Leslie S. Johnson, Germantown, MD (US); William D. Huse, Del Mar, CA (US); Herren Wu, Houston, TX (US); Jeffrey D. Watkins, Encinitas, CA (US)

**Publication Classification**

(51) **Int. Cl.** ..... **A61K 39/395**; A61K 39/40; A61K 39/42  
 (52) **U.S. Cl.** ..... **424/133.1**; 424/147.1; 424/141.1; 424/142.1; 424/159.1

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 6 Becker Farm Road  
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(57) **ABSTRACT**

Ultra high affinity antibodies with binding affinities in the range of  $10^{10}$  M<sup>-1</sup>, and even  $10^{11}$  M<sup>-1</sup> are disclosed. Such antibodies include antibodies having novel high affinity complementarity determining regions (CDRs), especially those with framework and constant regions derived from either humans or mice. Methods of preparing and screening such antibodies, as well as methods of using them to prevent and/or treat disease, especially virus-induced diseases, are also disclosed.

(21) **Appl. No.:** 10/657,363(22) **Filed:** Sep. 8, 2003**Related U.S. Application Data**

(63) Continuation of application No. 09/771,415, filed on Jan. 26, 2001, now Pat. No. 6,656,467.